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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 JOHNATHAN WILLIAM MIKULA,
17 CHRISTIAN FERNANDEZ, AMIT
18 RAJ BERI, SWAY ENERGY
19 CORPORATION, AVTAR SINGH
20 DHILLON, EMERALD HEALTH
21 PHARMACEUTICALS INC., and
22 JAMES M. DEMESA

23 Defendants.
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Case No. 2:22-cv-7096

**CONSENT TO ENTRY OF FINAL
JUDGMENT BY JAMES M. DEMESA**

1 1. Defendant James M. DeMesa (“Defendant”) waives service of a
2 summons and the complaint in this action, enters a general appearance, and admits
3 the Court’s jurisdiction over Defendant and over the subject matter of this action.

4 2. Without admitting or denying the allegations of the complaint (except as
5 provided herein in paragraph 11 and except as to personal and subject matter
6 jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the
7 final Judgment in the form attached hereto (the “Final Judgment”) and incorporated
8 by reference herein, which, among other things:

9 (a) permanently restrains and enjoins Defendant from violation of
10 Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a);

11 (b) permanently restrains and enjoins Defendant from violation of
12 Section 10(b) of the Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b),
13 and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

14 (c) orders Defendant to pay a civil penalty in the amount of \$103,591
15 under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of
16 the Exchange Act, 15 U.S.C. § 78u(d)(3); and

17 (d) prohibits Defendant, for five (5) years following the entry of the
18 Final Judgment, from acting as an officer or director of any issuer that has a class of
19 securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or
20 that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15
21 U.S.C. § 78o(d).

22 3. Defendant acknowledges that the civil penalty paid pursuant to the Final
23 Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a)
24 of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
25 distribution is made, the civil penalty shall be treated as a penalty paid to the
26 government for all purposes, including all tax purposes. To preserve the deterrent
27 effect of the civil penalty, Defendant agrees that he shall not, after offset or reduction
28 of any award of compensatory damages in any Related Investor Action based on

1 Defendant's payment of disgorgement in this action, argue that he is entitled to, nor
2 shall he further benefit by, offset or reduction of such compensatory damages award
3 by the amount of any part of Defendant's payment of a civil penalty in this action
4 ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty
5 Offset, Defendant agrees that he shall, within 30 days after entry of a final order
6 granting the Penalty Offset, notify the Commission's counsel in this action and pay
7 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as
8 the Commission directs. Such a payment shall not be deemed an additional civil
9 penalty and shall not be deemed to change the amount of the civil penalty imposed in
10 this action. For purposes of this paragraph, a "Related Investor Action" means a
11 private damages action brought against Defendant by or on behalf of one or more
12 investors based on substantially the same facts as alleged in the Complaint in this
13 action.

14 4. Defendant agrees that he shall not seek or accept, directly or indirectly,
15 reimbursement or indemnification from any source, including but not limited to
16 payment made pursuant to any insurance policy, with regard to any civil penalty
17 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether
18 such penalty amounts or any part thereof are added to a distribution fund or otherwise
19 used for the benefit of investors. Defendant further agrees that he shall not claim,
20 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or
21 local tax for any penalty amounts that Defendant pays pursuant to the Final
22 Judgment, regardless of whether such penalty amounts or any part thereof are added
23 to a distribution fund or otherwise used for the benefit of investors

24 5. Defendant waives the entry of findings of fact and conclusions of law
25 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

26 6. Defendant waives the right, if any, to a jury trial and to appeal from the
27 entry of the Final Judgment.

28 7. Defendant enters into this Consent voluntarily and represents that no

1 threats, offers, promises, or inducements of any kind have been made by the
2 Commission or any member, officer, employee, agent, or representative of the
3 Commission to induce Defendant to enter into this Consent.

4 8. Defendant agrees that this Consent shall be incorporated into the Final
5 Judgment with the same force and effect as if fully set forth therein.

6 9. Defendant will not oppose the enforcement of the Final Judgment on the
7 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of
8 Civil Procedure, and hereby waives any objection based thereon.

9 10. Defendant waives service of the Final Judgment and agrees that entry of
10 the Final Judgment by the Court and filing with the Clerk of the Court will constitute
11 notice to Defendant of its terms and conditions. Defendant further agrees to provide
12 counsel for the Commission, within thirty days after the Final Judgment is filed with
13 the Clerk of the Court, with an affidavit or declaration stating that Defendant has
14 received and read a copy of the Final Judgment.

15 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims
16 asserted against Defendant in this civil proceeding. Defendant acknowledges that no
17 promise or representation has been made by the Commission or any member, officer,
18 employee, agent, or representative of the Commission with regard to any criminal
19 liability that may have arisen or may arise from the facts underlying this action or
20 immunity from any such criminal liability. Defendant waives any claim of Double
21 Jeopardy based upon the settlement of this proceeding, including the imposition of
22 any remedy or civil penalty herein. Defendant further acknowledges that the Court's
23 entry of a permanent injunction may have collateral consequences under federal or
24 state law and the rules and regulations of self-regulatory organizations, licensing
25 boards, and other regulatory organizations. Such collateral consequences include, but
26 are not limited to, a statutory disqualification with respect to membership or
27 participation in, or association with a member of, a self-regulatory organization. This
28 statutory disqualification has consequences that are separate from any sanction

1 imposed in an administrative proceeding. In addition, in any disciplinary proceeding
2 before the Commission based on the entry of the injunction in this action, Defendant
3 understands that he shall not be permitted to contest the factual allegations of the
4 complaint in this action.

5 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.
6 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a
7 defendant or respondent to consent to a judgment or order that imposes a sanction
8 while denying the allegations in the complaint or order for proceedings," and "a
9 refusal to admit the allegations is equivalent to a denial, unless the defendant or
10 respondent states that he neither admit nor denies the allegations." As part of
11 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i)
12 will not take any action or make or permit to be made any public statement denying,
13 directly or indirectly, any allegation in the complaint or creating the impression that
14 the complaint is without factual basis; (ii) will not make or permit to be made any
15 public statement to the effect that Defendant does not admit the allegations of the
16 complaint, or that this Consent contains no admission of the allegations, without also
17 stating that Defendant does not deny the allegations; (iii) upon the filing of this
18 Consent, Defendant hereby withdraws any papers filed in this action to the extent that
19 they deny any allegation in the complaint; and (iv) stipulates solely for purposes of
20 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.
21 §523, that the allegations in the complaint are true, and further, that any debt for
22 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant
23 under the Final Judgment or any other judgment, order, consent order, decree or
24 settlement agreement entered in connection with this proceeding, is a debt for the
25 violation by Defendant of the federal securities laws or any regulation or order issued
26 under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C.
27 §523(a) (19). If Defendant breaches this agreement, the Commission may petition
28 the Court to vacate the Final Judgment and restore this action to its active docket.

1 Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right
2 to take legal or factual positions in litigation or other legal proceedings in which the
3 Commission is not a party.

4 13. Defendant hereby waives any rights under the Equal Access to Justice
5 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other
6 provision of law to seek from the United States, or any agency, or any official of the
7 United States acting in his or her official capacity, directly or indirectly,
8 reimbursement of attorney's fees or other fees, expenses, or costs expended by
9 Defendant to defend against this action. For these purposes, Defendant agrees that
10 Defendant is not the prevailing party in this action since the parties have reached a
11 good faith settlement.

12 14. In connection with this action and any related judicial or administrative
13 proceeding or investigation commenced by the Commission or to which the
14 Commission is a party, Defendant (i) agrees to appear and be interviewed by
15 Commission staff at such times and places as the staff requests upon reasonable
16 notice; (ii) will accept service by mail or facsimile transmission of notices or
17 subpoenas issued by the Commission for documents or testimony at depositions,
18 hearings, or trials, or in connection with any related investigation by Commission
19 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of
20 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives
21 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil
22 Procedure and any applicable local rules, provided that the party requesting the
23 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the
24 then-prevailing U.S. Government per diem rates; and (v) consents to personal
25 jurisdiction over Defendant in any United States District Court for purposes of
26 enforcing any such subpoena.

27 15. Defendant agrees that the Commission may present the Final Judgment
28 to the Court for signature and entry without further notice.

1 16. Defendant agrees that this Court shall retain jurisdiction over this matter
2 for the purpose of enforcing the terms of the Final Judgment.


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4 Dated: Sept 14, 2022

5 
6 James M. DeMesa

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8 On _____, 2022, James M. DeMesa, a person known to me,
9 personally appeared before me and acknowledged executing the foregoing Consent.

10
11
12 _____
13 Notary Public
14 Commission expires:

15
16 Approved as to form:

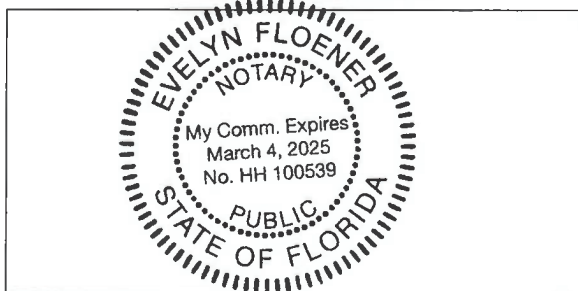
17 
18 _____
19 Randall R. Lee
20 Cooley LLP
21 1333 2nd Street, Suite 400
22 Santa Monica, CA 90401-4100
23 (310) 883 6485
24 Attorneys for Defendant
25
26
27
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Acknowledgment by Individual

State of Florida

County of PinellasThe foregoing instrument was acknowledged before me this 12/12 day
of Sept., 2022, by means of ☒ physical presence or ☐ online notarizationJames M. DeMesa (name of person acknowledging).☐ Personally known to me☒ Produced IdentificationType of Identification Produced Florida DLNotary signature Evelyn FloenerNotary name (typed or printed) Evelyn FloenerTitle (e.g., Notary Public) NOTARY Public

Place Seal Here



For Bank Purposes Only Description of Attached Document

Type or Title of Document

Consent To Entry of Final Judgement by James M. DeMesa

Document Date

Sept 14, 2022

Number of Pages

7

Signer(s) Other Than Named Above

none

Account Number (if applicable)

none